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SUBJECT: VENEZUELAN POLITICAL PROSECUTIONS UPDATE

Classified By: A/DCM ABELARDO A. ARIAS FOR REASONS 1.4 (d)

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Summary  
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1. (U) Venezuelan judges will soon open hearings to decide whether Venezuelan Workers' Confederation President Carlos Ortega, detained since March 1 2005, and former Miranda Governor Enrique Mendoza will stand trial for civil rebellion. A judge in Aragua is in the midst of hearings to decide whether to send former Caracas Metropolitan Police officials Lazaro Forero, Henry Vivas, and Ivan Simonovis, all detained since late 2004, to trial for conspiracy to commit murder in relation with the events of April 2002. The Penal Chamber of the Supreme Court reinstated the conviction of Gen. Carlos Alfonzo Martinez, making him once again subject to court restrictions on his movement and speech. A judge April 12 convicted journalist Patricia Poleo of defaming Interior Minister Jesse Chacon, and sentenced her to six months in prison, though she is free pending appeal. There have been no recent developments in the investigation into the murder of prosecutor Danilo Anderson, or in the case against Gen. Felipe Rodriguez, presently in custody in Yare prison. End Summary.

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Enrique Mendoza  
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2. (U) Prosecutors Jose Benigno Rojas and Gledys Carpio formally opened an investigation of former Miranda Governor and Democratic Coordinating Committee leader Enrique Mendoza March 14. The charges are civil rebellion, conspiracy, instigation to commit crimes, incitement to disobey the law, damage to public buildings, using violence to prevent the functioning of the public powers, and interruption of telecommunications. All stem from Mendoza's alleged involvement in the closure of Venezuelan de Television on April 11, 2002. On April 26 the judge postponed Mendoza's next hearing indefinitely, at the request of Mendoza's lawyer who alleged that the accusation was excessively vague. Mendoza is not subject to any court ordered restrictions at this time.

3. (C) Mendoza aide Alejandro Garcia told PolCouns May 4 that after the April 26 hearing the former Governor fears that the court will order his detention at the next opportunity. Garcia said Mendoza has asked various Coordinadora associates with international connections to be prepared to advocate for him with other governments should he be jailed. Asked what had led to Mendoza's changed perception since he had told the Ambassador previously that the GOV would prefer to harass rather than incarcerate him, Garcia said only that they had new information from inside sources.

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Carlos Ortega  
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4. (U) Prosecutor Luisa Ortega on April 12 formally accused Venezuelan Workers' Confederation President Carlos Ortega with civil rebellion, instigation to commit crimes, and using a false public document. Ortega has been detained since his arrest on March 1, and is now in Ramo Verde military prison. The next hearing is scheduled for May 6.

5. (C) Prosecutor Maria del Rocio Gasperi, who is not directly involved in the case but has access to the case file, told poloff April 20 that the evidence presented proves nothing, and that fellow prosecutor Ortega had not conducted a serious investigation. Gasperi said she asked the judge if she would allow the case to go to trial despite the shortcomings. The judge said yes, according to Gasperi, citing intense political pressure.

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Vivas, Forero, and Simonovis  
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6. (U) Carlos Bastides, Ivan Simonovis's defense lawyer,

told reporters May 3 he expected one more day of hearings before a judge rules whether Henry Vivas, Lazaro Forero, and

Simonovis are to stand trial as "necessary accomplices in complicity to commit murder", in relation to the deaths of two persons on April 11, 2002. Prosecutor Luisa Ortega alleges that the three former leaders of the Metropolitan Police (PM) ordered PM officers to open fire on Chavez supporters who confronted the opposition march on April 11, 2002. Simonovis was in charge of Security for Greater Caracas, Vivas was head of the PM, and Forero was his deputy.

Bastides told reporters he has little hope that the judge will not send the case to trial, given the political nature of the prosecution, but said he hoped the judge would allow the defendants to be tried in liberty, given that three Chavez supporters who turned themselves in recently in relation to the April 2002 events were released on bail.

17. (C) Jose Luis Tamayo, defense lawyer for Vivas and Forero, told poloff February 1 that the prosecution has no evidence on which to base its accusation against Vivas, Forero and Simonovis. The case, he asserted, is based on recycled evidence from the accusation against eight PM officers for killing two people on April 11, 2002. Tamayo alleges that murdered prosecutor Danilo Anderson offered to free the eight PM officers (they have been held for over two years) if they implicated Vivas, Forero and Simonovis. On April 27 Merlin Morales, lawyer representing the alleged victims, called for eight other PM officials to be accused, alleging that Forero had implicated them in his testimony. Tamayo angrily denied this to reporters, saying Forero had simply named the local PM commanders in response to a question from the judge.

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Gen. Carlos Alfonzo Martinez  
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18. (U) The Penal Chamber of the Supreme Court April 14 revoked the October 2004 Appeals Court ruling throwing out all criminal charges against Gen. Carlos Alfonzo Martinez. The decision, written by former military Prosecutor General now President of the Penal Chamber Eladio Aponte Aponte, is based on the prosecution's claim that 2nd Appeals Court Judge Jesus Ollarves acted improperly when he rejected a motion to recuse himself and another judge from the case. The decision reinstates the conviction of Gen. Alfonzo for violating security zones (for which he had been sentenced to five years probation, and forbidden to speak with the media), and orders the original appeal to be reheard by another appeals court. On May 2 the 4th Appeals Court was assigned to hear the appeal again. The Commission of Judicial Restructuring ruled April 21 that Ollarves should be investigated for his decision not to accept a prosecution demand that he separate himself from the case.

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Patricia Poleo  
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19. (U) A Caracas court found journalist Patricia Poleo guilty of defaming Interior Minister Jesse Chacon April 12, and sentenced her to six months in prison. The charges related to Poleo's publication of a photograph that allegedly showed Chacon standing over someone killed at the Venezuelan Television offices during the February 1992 coup attempt. Poleo is free pending appeal. It is unclear whether she will have to serve jail time for this conviction.

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Anderson and El Cuervo Cases Stalled  
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10. (U) There have been no new developments in the Anderson murder investigation. Two of the three suspects in custody, the former police inspectors Otoniel and Roland Guevara, were transferred from DISIP headquarters, where they had been detained since their arrest, to the Yare II prison, defense lawyer Pedro Castillo told reporters April 28. Gen. Felipe Rodriguez was charged with civil rebellion, instigation of rebellion, conspiracy against the president, illegally carrying a weapon, bombing a diplomatic mission, conspiracy, and assault on March 6. He was transferred from Military Intelligence headquarters to Yare I March 21, despite a court order that he be transferred to the military prison Ramo Verde. His family has public charged that he is being held in extremely poor conditions.

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Comment  
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11. (C) The GOV is aggressively pursuing the former opposition leadership through judicial prosecutions. While these cases may follow the forms of due process, first hand reports of the prosecution cases and judicial decisions

indicate that the cases are political in nature. The political control exerted by the GOV over prosecutors and judges effectively denies political defendants the right to defend themselves, or the presumption of innocence. If Mendoza, Ortega, Alfonzo Martinez, Vivas, Forero, and Simonovis are not convicted, it will be as a result of a political decision, not because the defendants will have prevailed in a fair fight.  
McFarland

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